

This adoption has been filed with the Office of Administrative Law which may edit it before publishing it in the New Jersey Register. Please refer to the December 3, 2001 New Jersey Register (33 N.J.R. 4128(b)) for the official text of the adoption.

ENVIRONMENTAL PROTECTION OFFICE OF AIR QUALITY MANAGEMENT

National Low Emission Vehicle (NLEV) and Heavy-Duty Diesel New Engine Requirements Program

Adopted Amendments: N.J.A.C. 7:27-26.1 through 26.7 and 26.15 and N.J.A.C. 7:27-26 Appendix

Adopted New Rules: N.J.A.C. 7:27-26.8, 26.9, 26.10 and 26.11

Proposed: July 16, 2001 at 33 N.J.R. 2381(a).

Adopted: October 28, 2001 by Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection.

Filed: November 1, 2001, as R. 2001 d.446, **with technical changes** not requiring additional public notice and comment (See N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 13:1B-3(e), 13:1D-9, 26:2C-8 et seq., specifically 26:2C-8, 8.1 through 8.5, 8.11, and N.J.S.A. 39:8-61.

DEP Docket Number: 15-01-06/232.

Effective Date: December 3, 2001.

Operative Date: December 27, 2001.

Expiration Date: Exempt.

The Department of Environmental Protection (the Department) is adopting herein new rules and amendments to N.J.A.C. 7:27-26 (formerly entitled "Ozone Transport Commission - Low Emission Vehicle Program"), its rules which control New Jersey's participation in the National Low Emission Vehicle (NLEV) program as well as its backstop Ozone Transport Commission - Low Emission Vehicle (OTC-

LEV) Program. These new rules and amendments add requirements for new heavy-duty diesel vehicles (HDDVs) equipped with model year 2005 and newer heavy-duty diesel engines (HDDEs) sold in New Jersey. (In order to indicate that rules for both light-duty passenger vehicles and heavy-duty diesel engines are contained within this subchapter, N.J.A.C. 7:27-26 has been given a new heading "National Low Emission Vehicle Program and Heavy-Duty Diesel New Engine Requirements Program.") Specifically, the adopted new rules and amendments require these new heavy-duty diesel engines to be certified as meeting California's recently-promulgated HDDE requirements. These requirements include both the federal emission standards applicable to all model year 2004 and newer HDDEs, plus a number of testing procedures which the EPA will require for compliance demonstration for model year 2007 and newer HDDEs. One of these, the "Not-To-Exceed" or "NTE" test procedure, is so called because it is used to demonstrate that an engine does not exceed, under a wide variety of operating conditions, an emission cap of 1.25 times the Federal Test Procedure emission standard. For this reason, the California requirements are often referred to as "Not-to-Exceed" or "NTE" requirements. As is explained in greater detail in the proposal of this rulemaking, California promulgated these NTE requirements to address a temporal gap of two years between the end of the requirements set forth in consent decrees entered into by seven major HDDE manufacturers and the effective date of equivalent federal testing requirements.

Since most states are authorized by Section 177 of the Clean Air Act to adopt California's new engine standards, California's rulemaking led to a multi-state initiative of which this rulemaking is a part; 20 states having committed to pursuing adoption of these NTE requirements. By this adoption, New Jersey is fulfilling the

commitment it made when it joined the other members of the Ozone Transport Commission in unanimously signing a Memorandum of Understanding committing to adopt such requirements. (OTC members are Vermont, Maine, New Hampshire, Rhode Island, Massachusetts, New York, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Washington, D.C. and Virginia.) A number of non-OTC states also indicated a commitment to pursuing NTE rulemaking, including Arizona, Georgia, Minnesota, Nevada, North Carolina, Oregon, Texas and Wisconsin. In furtherance of this multi-state effort, State and Territorial Air Pollution Program Administrators/Association of Local Air Pollution Control Officials (STAPPA/ALAPCO) developed a model rule for states interested in adopting California's NTE requirements. The Department participated in drafting this model rule and used it in drafting New Jersey's NTE rule. (A copy of the model rule can be obtained by contacting STAPPA/ALAPCO or by downloading it from its website: www.4cleanair.org/DieselTrucks.pdf.) It is anticipated that adoption of these NTE requirements by states regulating the majority of HDDEs sold in this country will encourage and provide incentive for engine manufacturers to produce only engines meeting the NTE requirements, which will then become, de facto, national in nature.

Promulgation of the NTE requirements is expected to further the Department's Strategic Plan Clean Air Goal. Specifically, the reduction in emissions from heavy-duty diesel vehicles traveling through the State should help achieve the Strategic Plan Milestone that, by 2007, air throughout the State will meet national Clean Air Act standards for ozone and other air pollutants. This rulemaking will also support New Jersey's Environmental Performance Partnership Agreement Air Quality Milestones relating to (1) the ozone State Implementation Plan (SIP) (attainment of the one-hour and eight-hour air quality standards for ozone Statewide by 2007), (2)

the national health standard for particulate matter (PM) (maintaining current attainment status for PM10 and attaining the new fine particulate standard (PM2.5) by 2007) and (3) air toxics (reducing toxics emissions from motor vehicles).

Background

The Department held a public hearing on August 20, 2001 to provide interested parties the opportunity to present comments on the Department's proposed rulemaking, as well as the proposed SIP revision which this rulemaking represents. The comment period for the proposal and the proposed SIP revision closed on August 22, 2001. The Department received oral and/or written comments from the following persons:

1. Michael Calvin for American Lung Association of New Jersey
2. Gilbert S. Keteltas, Esq., for Caterpillar, Inc.
3. Barbara Sachau
4. Lisa A. Stegink, Esq., for Engine Manufacturers' Association
5. Andrew R. Stewart, Esq., for International Truck and Engine Corporation
6. Louis Young, for New Jersey Coalition of Automotive Retailers

Comments the Department received on the proposal and the proposed SIP revision are summarized and responded to below.

Summary of Hearing Officer's Recommendations and Agency Responses: the Department's proposed new rules and amendments and proposed SIP revision:

John Elston, Administrator of the Department's Office of Air Quality Management, served as the Hearing Officer at the August 20, 2001, public hearing held at the Department's Public Hearing Room at 401 East State Street in Trenton, New Jersey. The Hearing Officer recommended that the Department adopt the proposed new rules and amendments, as proposed, with only changes to the

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Appendix to the subchapter to clarify that the reference therein to a Section 177 program is to the OTC-LEV program, and not the heavy-duty diesel program also governed by N.J.A.C. 7:27-26. The Department has accepted the Hearing Officer's recommendations.

The Department adopts herein the new rules and amendments, as proposed, with technical changes as discussed above. Please see the Summary of Public Comments and Agency Responses below for more detail. The Hearing Officer's recommendations are set forth in the hearing officer's report. The hearing report is available for inspection by contacting:

ATTN: Docket #15-01-06/232
Department of Environmental Protection
Office of Legal Affairs
401 East State Street
PO Box 402
Trenton, New Jersey 08625-0402

Copies of this adoption document are also available from the Department's website at www.state.nj.us/dep/aqm, where Air Quality Management rules, proposals, adoptions and SIP revisions are available. Specifically, this adoption is available at www.state.nj.us/dep/aqm/nteadopt.htm.

Summary of Public Comments and Agency Responses:

The number(s) in parentheses after each comment corresponds to the commenter numbers above and indicate the person(s) who submitted the comment. The comments are as follows:

1. COMMENT: One commenter commended the Department for acting quickly on this rulemaking and expressed very strong support for the proposed rulemaking, stating that controlling diesel emissions is going to be one of the most important aspects of providing healthy air for the people of New Jersey in the future. (1)

RESPONSE: The Department appreciates the commenter's support and agrees that addressing air pollution from diesel engines is of utmost importance in this State at this time.
2. COMMENT: One commenter urged the Department to require and enforce strict requirements beginning October 1, 2002 to protect the public's air. These requirements should conform with government clean air requirements and should be stringently enforced with the costs to be borne by the polluters. (3)

RESPONSE: The Department appreciates the commenter's support for this rulemaking. While these requirements will be protective of the public's health, under the terms of section 177 of the Clean Air Act, the State must give a lead time to engine manufacturers of two years, making enforcement by October 1, 2002 impossible. That date, however, is the start date by which the engine manufacturers who were party to the consent decrees must comply with the terms of those agreements and must continue to comply for two years

thereafter. Therefore, the temporal gap which this adoption is designed to address begins on or about October 1, 2004. By adopting these requirements by January 1, 2002, the Department can apply them to new engines as early as January 2, 2004, thus capturing new engines beginning with model years 2005.

3. COMMENT: One commenter expressed support for the rulemaking if the following conditions were met: (1) the rulemaking must include adoption of the supplemental test requirements as described in the CARB Settlement Agreements with Caterpillar, Inc. (Caterpillar) and other engine manufacturers; (2) there must be assurance that a sufficient number of states would adopt the CARB Regulations under Section 177 of the Federal Clean Air Act so that the standard would effectively become a national standard; and (3) there must be an expectation that the CARB regulations will survive legal challenges alleging a failure to meet the statutory lead-time and period of stability requirements of the Federal Clean Air Act. (2)

RESPONSE: The Department appreciates the commenter's support of this rulemaking. The commenter's concerns, however, are misplaced. For one, this rulemaking does include the supplemental test requirements included in the consent decrees to which Caterpillar is a party. The CARB supplemental test procedures parallel those in the consent decrees, but differ by adding options for flexibility and by exempting "ultra-small volume manufacturers" and "urban buses," until the 2007 model year, in order to allow additional lead time for compliance. These differences should make the requirements more, rather than less, attractive to engine manufacturers, particularly for those, like Caterpillar, who will already be complying with these

requirements under the terms of the consent decrees. Secondly, as is discussed more fully in Response to Comment 8 below, there is every expectation that enough states will adopt these requirements to effectively make it a national requirement. However, even if this expectation is not met, and the HDDV manufacturers elect not to meet the NTE requirements on a national basis, Section 177 of the Clean Air Act explicitly affords individual states, such as New Jersey, the opportunity to adopt these critical air pollution control measures. Finally, while the Department is confident that the CARB regulations will survive outstanding legal challenges, it would be imprudent to delay this rulemaking until all outstanding legal challenges are resolved. Any delay in this rulemaking at this time would compromise the State's ability to close the regulatory gap between the requirements established by the consent decrees and the federal requirements which go into effect beginning with model year 2007. In order to give the requisite two years' lead time, the Department must promulgate these rules by January 1, 2002 if they are to apply to new engines manufactured as early as January 2, 2004, the earliest date for commencement of the 2005 model year. CARB's NTE rules went into effect on July 25, 2001. As it stands now, CARB's rulemaking is presumptively valid and, absent a judicial or administrative stay, remains in effect. If, however, CARB's rulemaking is subsequently determined to violate the Clean Air Act and is subsequently nullified, the Department would review these amendments for legal sufficiency.

4. COMMENT: One commenter noted that International Truck and Engine Corporation recently filed an action in Federal District Court in California challenging the legality of CARB's adoption of the NTE and other

supplemental emission requirements and argued that, given the pendency of such litigation, New Jersey's adoption of NTE requirements would be premature. Another commenter suggested that because CARB's NTE regulations are currently subject to a legal challenge they cannot be considered to have been finalized, and may never be finalized. Successful challenge to California's rulemaking would mean, the commenter suggested further, that states would have no model year 2005-2006 requirements to reference or adopt as their own requirements. (4, 5)

RESPONSE: As is discussed more fully in the Response to Comment 3 above, the Department is confident that the CARB regulations will survive outstanding legal challenges and has determined that it would be imprudent to delay this rulemaking until all outstanding legal challenges are resolved. Rather than compromising the State's ability to close the regulatory gap by delaying this rulemaking, the Department has determined to proceed with this adoption at this time.

5. COMMENT: A number of commenters acknowledged that Section 177 of the Clean Air Act provides that states can adopt emission control standards for new motor vehicle engines that are identical to California standards under certain circumstances, but argue that these circumstances have not been met in the case of California's NTE requirements. Specifically, they argue that California has not yet been granted the requisite waiver from the EPA to promulgate such requirements, and thus states cannot adopt these California requirements. One commenter argued that the NTE and Euro III provisions impose stringent new standards of compliance requiring an issuance of an EPA waiver and that compliance will result in engine design changes and

increased costs. These commenters argued further that California can not be granted a Section 209(b) waiver by the EPA for the NTE requirements because it has not met the requirements set forth at Section 202(a) of the Clean Air Act that promulgation of such new engine regulations provide no less than four full model years of lead-time and no less than three full model years of stability. (2, 4, 5)

RESPONSE: As CARB explained in response to similar comments made to its proposed NTE requirements, it did not apply for a waiver under Section 209(b) of the Clean Air Act for its NTE rulemaking because its rulemaking came within the scope of a waiver it had previously been granted by the EPA for promulgating standards for heavy-duty diesel engines for these same model years. Rather than proposing to modify these standards, the CARB rulemaking only adds test procedures designed to ensure that the standards would be met. In CARB's words:

As stated in the Staff Report, federal timing constraints do not apply to California's rulemaking. The CAA requirements do not apply to this rulemaking since there are no proposed changes to emission standards that [C]ARB adopted in 1999. Further, California has authority to adopt a separate state program, including a certification program, for new motor vehicles and new motor vehicle engines under CAA § 209(b). California has the authority to adopt test procedures that ensure that new motor vehicles and new motor vehicle engines meet California's state emission control standards.

(Response to Comment 2, Final Statement of Reasons for Rulemaking, Including Summary of Comments and Agency Responses.) See also CARB's responses to Comments 4 and 12, also in the Final Statement of Reasons for Rulemaking, Including Summary of Comments and Agency Responses. This document is available on CARB's website at:

<http://www.arb.ca.gov/regact/ntetest/fsor.pdf>. A general fact sheet on CARB's NTE rulemaking, with shortcuts to all other NTE regulatory documents can be accessed at: <http://www.arb.ca.gov/msprog/ntetest/ntetest.htm>. The Department recognizes that CARB's position regarding the need for a new waiver has been challenged, but unless and until that challenge is successful the Department will continue to rely upon CARB's presumptively correct interpretation that it is acting within scope of the original waiver.

6. COMMENT: One commenter challenged the validity of the California NTE rulemaking on the grounds that the requirements are not technologically feasible as required by the Clean Air Act. (5)

RESPONSE: While section 177 of the Clean Air Act does not require a state adopting California's requirements to make a separate determination as to the feasibility of those requirements, the Department is satisfied that there has been a reasonable demonstration that engine manufacturers will be able to comply with these requirements for model year 2005 and newer HDDEs, particularly as those who are party to the consent decrees will have been complying with these requirements for two years prior to implementation of the Heavy-Duty Diesel New Engine Requirements by the State of New Jersey. CARB has provided further discussion of the technological feasibility of its NTE requirements in its response to comment 10, Final Statement of Reasons for Rulemaking, Including Summary of Comments and Agency Responses.

7. COMMENT: One commenter opposed the rulemaking on the grounds that the costs for New Jersey to adopt, implement, and enforce the proposed requirements would far outweigh any minimal air quality benefits that might be

derived from their adoption. (4)

RESPONSE: New Jersey projects an emissions benefit from promulgating these requirements of a reduction of NO_x by 547 tons in 2005 and 1,095 tons in 2006, a highly significant savings, and, at a cost of \$340 per ton, an extremely cost effective one at that. CARB has provided additional documentation concerning the cost effectiveness of this emissions reduction measure in its response to comment 15, CARB Final Statement of Reasons for Rulemaking, Including Summary of Comments and Agency Responses.

8. COMMENT: One commenter expressed concern that adoption of these NTE requirements would result in a significant negative economic impact to New Jersey's trucking industry. The commenter argued that trucking companies can be expected to quickly relocate their purchasing point for trucks to states that have not adopted the CARB requirements, which would directly impact the viability of truck distribution companies in New Jersey. This would mean that New Jersey would not realize the expected sales tax revenue from the sale of these trucks. The commenter postulated further that New Jersey would not realize the expected emissions gains, because engines from outside the state would dominate the population of engines operating within the state. (2)

RESPONSE: Sixteen states other than New Jersey and California are currently pursuing adoption of California's NTE requirements, including the entire Northeast region of the country except New Hampshire, which recently withdrew its NTE proposal. In the East, the Ozone Transport Region states of Connecticut, Delaware, Maryland, Maine, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, Virginia, and Washington, D.C. have been

joined by Georgia and North Carolina. Other states still considering adoption include Arizona, Minnesota, Nevada, and Texas. Along with California, this mass adoption of the NTE requirements would, in effect, produce a de facto national requirement, making it economically unfeasible for engine manufacturers to produce a second, non-compliant set of engines. Given the contiguous "NTE region" the adopting states will have created, and given that the cost to comply is less than \$800.00 per vehicle, it would seem unlikely that potential new vehicle customers in New Jersey would go outside the region to purchase new vehicles, especially were there an additional transportation or vehicle delivery charge that could diminish any perceived savings from a lower vehicle base price.

9. COMMENT: One commenter expressed the concern that during the temporal regulatory gap truck dealership could face a situation where (1) they have had non-compliant vehicles delivered to them by the manufacturers ; (2) they find themselves in short supply of a certain vehicle, or, last but not least, (3) potential customers go to nearby states to purchase non-compliant vehicles that are available at a lower cost than their NTE counterparts in New Jersey. If engine manufacturers manufacture one engine for vehicles to be sold in states adopting CARB's NTE requirements and another, less expensive engine for sale in non-NTE states, the cost differential would put New Jersey truck dealerships at a disadvantage. On the other hand, the commenter speculated that, as has happened in the NLEV program, it is likely that engine manufacturers would deliver compliant vehicles to dealerships in NTE states, and expected further that there would be very few circumstances where the manufacturer would be unable to do so, or the dealership would

have to get a vehicle from another state. (6)

RESPONSE: As stated in response to comment 8 above, because of the contiguous "NTE region" the adopting states will have created, and because the cost to comply is less than \$800.00 per vehicle, it would seem unlikely that potential new vehicle customers in New Jersey would go outside the region to purchase new vehicles, especially if there was an additional transportation or vehicle delivery charge that could diminish any perceived savings from a lower vehicle base price. In any event, even with less than full compliance, the State would realize a real and quantifiable air quality benefit from the compliant vehicles offered for sale in New Jersey.

Summary of Agency-Initiated Changes:

The Department has made technical changes to the Appendix to N.J.A.C. 7:27-26 to clarify that references in the Appendix to a Clean Air Act §177 Program is to the OTC-LEV program, and not to the heavy-duty diesel new engine standards program, which is the subject of this rulemaking. The Department has also changed the name of the subchapter from that proposed, that is, from "National Low Emission Vehicle (NLEV) and Heavy-Duty Diesel New Engine Standards Program" to "National Low Emission Vehicle (NLEV) and Heavy-Duty Diesel New Engine Requirements Program," to clarify that the NTE requirements are not emission standards, per se.

Federal Standards Analysis

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c.65), require State agencies which adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking

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document a Federal Standards Analysis. The adopted new rules and amendments to N.J.A.C. 7:27-26 do exceed Federal standards for heavy-duty diesel engines sold in New Jersey. A comparison of these standards was provided in the Summary of the proposal of these new rules and amendments, which also included the policy reasons for going beyond the federal new engine requirements. While it is not possible to project a precise estimate of the savings which these measures will afford the State and its residents, an increase of no more than \$800 per vehicle will be more than offset by the economic benefits of complying with Clean Air Act mandates regarding attainment of the NAAQS for ozone and the actual savings related to reduced health care costs which cleaner air provides, as was discussed in the impact statements in the proposal of these new rules and amendments.

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Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

SUBCHAPTER 26. NATIONAL LOW EMISSION VEHICLE [PROGRAM] ***(NLEV)***
AND HEAVY-DUTY DIESEL NEW ENGINE ***[STANDARDS]*** ***REQUIREMENTS**
PROGRAM*

7:27-26.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

. . .

"Certified" means, in respect to a motor vehicle, motor vehicle engine or engine family, or air contaminant emission control system, having been found by the California Air Resources Board to have satisfied the criteria adopted by the California Air Resources Board for the control of specified air contaminants from motor vehicles.

. . .

"Diesel engine" means a compression ignition type of internal combustion engine.

. . .

"Gross vehicle weight rating" or "GVWR" means the value specified by the manufacturer as the maximum design loaded weight of a single vehicle.

"Heavy-duty diesel engine" means a diesel engine that is used to propel a heavy-duty motor vehicle.

"Heavy-duty engine" means an engine which is used to propel a heavy-duty

vehicle.

"Heavy-duty motor vehicle" means a motor vehicle with a GVWR of 14,001 pounds or more.

. . .

"Non-methane organic gas" or "NMOG" means the total mass of oxygenated and non-oxygenated hydrocarbon emissions.

. . .

"OTC-LEV program" means the program established in this subchapter at N.J.A.C. 7:27-26.1 through 7, 26.15 and 26.16, which regulates certain motor vehicles, certain motor vehicle engines or engine families, and/or certain air contaminant emission control systems.

"OTC-LEV program control system" means an air contaminant emission control system designed for use and/or used to enable an OTC-LEV program engine or a OTC-LEV program vehicle to meet the emission standards of the OTC-LEV program.

"OTC-LEV program engine" means an engine subject to the requirements of the OTC-LEV program.

"OTC-LEV program vehicle" means a motor vehicle subject to the requirements of the OTC-LEV program.

"Ozone Transport Commission - Low Emission Vehicle Program" or "OTC-LEV Program" means a LEV program as set forth in 40 C.F.R. 51.120(c).

. . .

"Passenger car" or "PC" means any motor vehicle designed primarily for transportation of persons and having a design capacity of 12 or fewer persons.

. . .

"Running changes" means modifications to motor vehicle engines or air

contaminant emission control systems specified by the vehicle manufacturer that are to be effected by the manufacturer during vehicle production, and which are implemented to correct design defects that may result in excess emissions from the motor vehicle.

. . .

"Type A HEV" means an HEV which achieves a minimum range of 60 miles over the All-Electric Range Test as defined in "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles" as incorporated by reference in section 1960.1(k) of Title-13, California Code of Regulations.

"Type B HEV" means an HEV which achieves a range of 40 to 59 miles over the All-Electric Range Test as defined in "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles" as incorporated by reference in section 1960.1(k) of Title-13, California Code of Regulations.

"Type C HEV" means an HEV which achieves a range of 0 to 39 miles over the All-Electric Range Test as defined in "California Exhaust Emission Standards and Test Procedures for 1988 and Subsequent Model Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles" as incorporated by reference in section 1960.1(k) of Title-13, California Code of Regulations.

. . .

"Ultra-small volume manufacturer" means any manufacturer with cumulative California sales of new passenger cars, light-duty trucks, medium-duty vehicles, heavy-duty vehicles, and heavy-duty engines, that total no more than 300 per model year based on the average number of vehicles and engines sold by the manufacturer in the previous three consecutive model years.

“Urban bus” means a passenger-carrying vehicle powered by a heavy heavy-duty diesel engine, or of a type normally powered by a heavy heavy-duty diesel engine, with a load capacity of 15 or more passengers and intended primarily for intra-city operation, that is, within the confines of a city or greater metropolitan area. Operation of such vehicles is characterized by short rides and frequent stops. To facilitate this type of operation, more than one set of quick-operating entrance and exit doors would normally be installed. Since fares are usually paid in cash or token, rather than purchased in advance in the form of tickets, such vehicles would normally have equipment installed for the collection of fares. Such vehicles are also typically characterized by the absence of equipment and facilities for long distance travel, for example, restrooms, large luggage compartments, and facilities for stowing carry-on luggage.

. . .

7:27-26.2 Applicability

(a) N.J.A.C. 7:26.1 through 7, 26.11, 26.15 and 26.16 shall apply to all 1999 model year and subsequent model year motor vehicles which are passenger cars and light-duty trucks, motor vehicle engines in such motor vehicles, and air contaminant emission control systems for such motor vehicles and motor vehicle engines, otherwise referred to in this subchapter as "OTC-LEV program vehicles, engines and control systems."

(b) (No change.)

(c) Upon termination of the State's participation in the NLEV Program, the provisions of N.J.A.C. 7:27-26.1 through 7, 26.11, 26.15 and 26.16 shall apply to OTC-LEV program vehicles, engines, and control systems. Notice of such termination shall be published in the New Jersey Register.

(d) Notwithstanding (a) above, the provisions of N.J.A.C. 7:27-26.1 through 7, 26.11, 26.15 and 26.16 shall not apply to OTC-LEV program vehicles, engines, and control systems unless the combined number of registrations of new motor vehicles in those states and the District of Columbia, excluding New Jersey, within the OTR that have enacted legislation or adopted rules and regulations establishing and implementing a low emission vehicle program for a motor vehicle model year not later than 1999, is equal to or greater than 40 percent of the total number of registrations of new motor vehicles in all of the states and the District of Columbia within the OTR.

(e) N.J.A.C. 7:27-26.1, 26.8 through 26.11, 26.15 and 26.16 shall apply to all new heavy-duty motor vehicles which are equipped with 2005 and subsequent model year heavy-duty diesel engines.

7:27-26.3 Prohibitions (OTC-LEV Program)

(a)-(e) (No change.)

7:27-26.4 Emission certification standards (OTC-LEV Program)

(a)-(e) (No change.)

7:27-26.5 Fleet average (OTC-LEV Program)

(a)-(e) (No change.)

7:27-26.6 Reporting and new motor vehicle dealer requirements (OTC-LEV Program)

(a) - (b) (No change.)

7:27-26.7 Additional requirements (OTC-LEV Program)

(No change)

7:27-26.8 Requirements for vehicle transactions (New HDDE Standards Program)

(a) No person who is a resident of this State, or who operates an established place of business within this State, shall sell, lease, rent, import, deliver, purchase, acquire, receive or otherwise transfer in this State, or offer for sale, lease, or rental in this State (or attempt or assist in any of these actions) any of the following types of motor vehicles or engines that are intended primarily for use or for registration in this State, unless the manufacturer of the engine has received an Executive Order issued by the California Air Resources Board for such engine, certifying that the engine complies with the applicable exhaust emission standards under Title 13, section 1956.8 of the California Code of Regulations, incorporated herein by reference:

1. A 2005 or subsequent model year heavy-duty diesel engine;
2. A new motor vehicle equipped with a 2005 or subsequent model year heavy-duty diesel engine; or
3. A motor vehicle with a new 2005 or subsequent model year heavy-duty diesel engine.

(b) For the purposes of this subchapter, it is conclusively presumed that the equitable or legal title to any motor vehicle with an odometer reading of 7,500 miles or more has been transferred to an ultimate purchaser, and that the equitable or legal title to any motor vehicle with an odometer reading of less than 7,500 miles has not been transferred to an ultimate purchaser.

7:27-26.9 Exemptions and technology review (New HDDE Standards Program)

(a) Notwithstanding the provisions of N.J.A.C. 7:27-26.8, the requirements set forth at N.J.A.C. 7:27-26.8 through 26.11 shall not apply to:

1. A model year 2005 or 2006 heavy-duty diesel engine manufactured by an ultra-small volume manufacturer or intended for use in an urban bus;
2. A heavy-duty diesel engine of a model year and engine family for which CARB has determined, based upon its technology review, that compliance with its heavy-duty diesel engine standards is not required;
3. A vehicle acquired outside of New Jersey by a New Jersey resident for the purpose of replacing a vehicle registered to the resident which, while out of New Jersey, was stolen, or was damaged, or became inoperative, beyond reasonable repair; provided that such replacement vehicle is acquired within a reasonable amount of time following the time the previously owned vehicle was either stolen, damaged, or became inoperative;
4. A vehicle transferred by inheritance, or by a decree of divorce, dissolution, or legal separation entered by a court of competent jurisdiction;
5. An emergency vehicle;
6. A military tactical vehicle or equipment; or
7. Any other vehicle exempted by the California Health and Safety Code, section 43656.

7:27-26.10 Manufacturer compliance with California orders and voluntary recalls (New HDDE Standards Program)

(a) Any order or enforcement action taken by the California Air Resources Board to correct noncompliance with any heavy-duty diesel engine requirements adopted by such Board on December 8, 2000 shall be applicable to all such engines and motor vehicles subject to this subchapter that are sold, leased, or rented, offered

for sale, lease, or rental, or registered in New Jersey, except where the manufacturer demonstrates to the Department's satisfaction, within 21 days of issuance of such California Air Resources Board action, that this action is not applicable to such engines or vehicles in New Jersey.

(b) Any voluntary or influenced emission-related recall campaign initiated by any manufacturer pursuant to Title 13, sections 2113 through 2121 of the California Code of Regulations shall extend to all applicable engines and motor vehicles subject to this subchapter, sold, leased, or rented, offered for sale, lease, or rental, or registered in New Jersey, except where the manufacturer demonstrates to the Department's satisfaction, within 21 days of approval of the campaign by the California Air Resources Board, that this campaign is not applicable to such engines or vehicles in New Jersey.

7:27-26.11 Enforcement

(a) The Department and its representatives shall have the right to enter and inspect any site, building, equipment, or vehicle, or any portion thereof, at any time, in order to ascertain compliance or non-compliance with the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., this subchapter, any exemption, or any order, consent order, agreement, or remedial action plan issued, approved or entered into pursuant thereto. Such right shall include, but not be limited to the right to test or sample any materials, motor vehicles or motor vehicle engines or any emissions therefrom, at the facility, to sketch or photograph any portion of the site, building, vehicles or motor vehicle engines, to copy or photograph any document or records necessary to determine such compliance or non-compliance, and to interview any employees or representatives of the owner, operator or registrant. Such right shall be absolute and shall not be conditioned upon any action by the Department, except the

presentation of appropriate credentials as requested and compliance with appropriate standard safety procedures.

(b) Except with respect to the fleet average requirements set forth in N.J.A.C. 7:27-26.5(a), failure to comply with any of the obligations or requirements of this subchapter shall subject the violator to an enforcement action pursuant to the provisions of N.J.S.A. 26:2C-19.

7:27-26.12 through 26.14 (Reserved)

7:27-26.15 Incorporation by reference

(a) - (d) (No change.)

(e) The following documents and sources are incorporated by reference within this subchapter:

1. - 8. (No change.)

9. "Federal Highway Fuel Economy Test Procedure" 40 C.F.R. Part 600 Subpart B;

10. 40 C.F.R. 86.082-24;

11. "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures," 40 C.F.R. Part 86, Subparts A and B ;

12. 40 Code of Federal Regulations (C.F.R.) Parts 51, 52 and 85 ;

13. "California Exhaust Emission Standards and Test Procedures for 1985 and Subsequent Model Heavy-Duty Diesel-Engines and Vehicles" adopted December 8, 2000, CARB;

14. 40 Code of Federal Regulations (C.F.R.) Part 86, Subpart A, "General Provisions for Emission Regulations for 1977 and Later Model Year

New Light-Duty Vehicles, Light-Duty Trucks, and Heavy-Duty Engines, and for 1985 and later Model Year New Gasoline-Fuel and Methanol Fueled Heavy-Duty Vehicles";

15. 40 Code of Federal Regulations (C.F.R.) Part 86, Subpart I; "Emission Regulations for New Diesel Heavy-Duty Engines; Smoke Exhaust Test Procedure"; and
 16. 40 Code of Federal Regulations (C.F.R.) Part 86, Subpart N, "Emission Regulations for New Otto-Cycle and Diesel Heavy-Duty Engines; Gaseous and Particulate Exhaust Test Procedures."
- (f) (No change.)

APPENDIX

The State commits to support *the* NLEV *Program* as an acceptable alternative to the State's *light-duty* Clean Air Act §177 Program *otherwise referred to in this subchapter as the "OTC-LEV Program"* for the duration of the State's participation in *the* NLEV *Program*.

The State recognizes that its commitment to NLEV is necessary to ensure that NLEV remain in effect.

The State is submitting this SIP revision in accordance with the applicable Clean Air Act requirements at §110 and EPA regulations at 40 C.F.R. Part 86 and 40 C.F.R. Parts 51 and 52.

For the duration of the State's participation in NLEV, the State intends to forbear from adopting and implementing a ZEV mandate effective prior to model year 2006. Notwithstanding the previous sentence, if, no later than December 15, 2000, the US EPA does not adopt standards at least as stringent as the NLEV

This adoption has been filed with the Office of Administrative Law which may edit it before publishing it in the New Jersey Register. Please refer to the December 3, 2001 New Jersey Register (33 N.J.R. 4128(b)) for the official text of the adoption.

standards provided in 40 C.F.R. Part 86, subpart R that apply to new motor vehicles in model year 2004, 2005, or 2006, the State intends to forbear from adopting and implementing a ZEV mandate effective prior to model year 2004.